Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1977

No. 76-352

E. C. CHAPPELLE, JR.,
Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,
Appellees.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLANT

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BRIEF FOR THE APPELLANT

SUMMARY STATEMENT OF THE CASE

This appellant, E. C. Chappelle, Jr. for a period of five years, occupied the position of executive director and secretary of The Greater Baton Rouge Airport District. On May 13, 1974, appellant resigned from this salaried position and was appointed as a commissioner on The Greater Baton Rouge Airport Commission. Subsequently, prior to the termination of the appointed term, the East Baton Rouge Parish Clerk, based upon a legal opinion rendered by The East Baton Rouge Parish Attorney, declared the appellant's position on The

Greater Baton Rouge Airport Commission vacant as it was the opinion of The Baton Rouge Parish Attorney that appellant was not qualified to serve as a member of the Airport Commission since at the time of his appointment, appellant owned no property "assessed" in East Baton Rouge Parish, as required by Louisiana Act 151 of 1969, as implemented by East Baton Rouge Parish Council Resolution Number 8645, adopted on January 14, 1970. As a result of this legal opinion rendered by The East Baton Rouge Parish Attorney and the declaration of vacancy made by the East Baton Rouge Parish Clerk, appellant on March 4, 1975, at The Greater Baton Rouge Airport Commission meeting was formally denied his position as a member of the Airport Commission and removed therefrom.

On February 26, 1975, appellant initially filed a petition in the 19th Judicial District Court in the Parish of East Baton Rouge, State of Louisiana, for injunctive relief seeking to enjoin the municipal authorities from removing the appellant from his position on the Airport Commission alleging that appellant had met all the qualifications of Louisiana Act 151 of 1969 and alternatively that Louisiana Act 151 of 1969 was violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Appellant's injunctive relief was denied and on March 4, 1975, appellant was removed from his position of the Airport Commission. On March 5, 1975, the appellant sought in the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, a declaratory judgment requesting that appellant be deemed to have met the qualifications imposed by Louisiana Act 151 of 1969 and in the alternative requested that Louisiana Act 151 of 1969 be held infirm as violating the Equal Protection and Due Process Clauses of the

Fourteenth Amendment to the United States Constitution. On July 23, 1975, the trial judge held that appellant had not met the qualification imposed by Louisiana Act 151 of 1969 and that Louisiana Act 151 of 1969 was constitutional. The trial judge stated that the right to an appointed office, not being a fundamental right, must be tested by the traditional test of equal protection. The trial judge felt that there was a rational basis for the requirement of ownership of "assessed property" as opposed to "non-assessed property," imposed by Louisiana Act 151 of 1969.

To the trial judge's ruling, the appellant timely appealed on July 28, 1975, to the First Circuit Court of Appeal for the State of Louisiana, the next step in Louisiana's appellant process. Again in this appellate court, the appellant urged the unconstitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. The First Circuit Court of Appeal for the State of Louisiana likewise utilized the traditional test of equal protection and found that there was a rational basis for the classification imposed by the Louisiana Legislature in enacting Louisiana Act 151 of 1969. This appellant, who has expertise in the field of aviation, and who owns substantial amounts of personal or movable property, yet owned no "assessed property," failed to see how "assessed property" owners were somehow more qualified than non-owners of "assessed property." He, therefore, sought to have the judgment of the First Circuit Court of Appeal of the State of Louisiana reviewed. After first timely requesting a rehearing from the First Circuit Court of Appeal, which was refused on April 12, 1976, appellant sought a review from the Supreme Court of Louisiana.

Since appellant had no right to direct appeal to the Supreme Court of Louisiana, as direct appeal is only allowed in Louisiana when a state statute is struck down under a constitutional challenge, appellant sought discretionary remedial writs of the Supreme Court of Louisiana. On May 12, 1976, appellant timely filed in the Supreme Court of Louisiana an application for writs of Certiorari and Review to review the judgment below and specifically ask the Supreme Court of Louisiana to review the constitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. On June 9, 1976, the Supreme Court of Louisiana denied appellant's application for a writ of Certiorari or a writ of Review. The memorandum decision recorded at 332 So.2d 821 stated: "Writ denied; no merit in the assignment of errors." Two of the justices of the Supreme Court of Louisiana felt that the writs should be granted. One of the justices particularly felt that the "writs should be granted. *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532(1970) mandates relief for appellant." The Supreme Court of Louisiana is the highest court in the State of Louisiana.

OPINIONS BELOW

The First Circuit Court of Appeal, State of Louisiana, rendered its opinion in this matter, *Chappelle v. Greater Baton Rouge Airport District*, 329 So.2d 821, (La. Ct. of A, 1976). The denial of the writs of Certiorari and Review and other remedial writs by the Supreme Court of Louisiana is reported as *E. C. Chappelle, Jr. v. The Greater Baton Rouge Airport District, et al.*, 332 So.2d 821.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257 (2); Federal Code Annotated, Title 28, Section 1257 (2). Probable jurisdiction of this appeal was noted on January 10, 1977.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves Section 1 of the Fourteenth Amendment, U. S. Constitution and whether Louisiana Act 151 of 1969 violates the Due Process and Equal Protection Clauses of Section 1 of the Fourteenth Amendment to the United States Constitution.

QUESTIONS PRESENTED

I. Does the United States Supreme Court decision styled *Turner v. Fouche* 396 U. S. 346, 90 S.Ct. 532(1970) mandate that Louisiana Act 151 of 1969 be struck down as being violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

II. Whether Louisiana Act 151 of 1969 which sets forth a classification of "assessed property" owners and non-owners of "assessed property," a classification not yet examined by this court, is violative of appellant's equal protection and due process rights as provided in the Fourteenth Amendment to the United States Constitution. Incidental thereto is the question whether the criterion of "assessment" as set forth in Louisiana Act 151 of 1969 is somehow rationally related to the

legislative objective sought in enacting that legislation—that is, does ownership of "assessed property" make one more qualified to serve on the Airport Commission than someone who is not the owner of "assessed property," but yet may have substantial connections with the community, may own substantial amounts of non-assessed property, or may have great expertise in the field of aviation.

III. Whether the right to hold an appointed office is a "fundamental right" within the "compelling state interest test" of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

I. THE UNITED STATES SUPREME COURT DECISION STYLED *TURNER V. FOUCHE* 396 U. S. 346, 90 S.Ct. 532 (1970) MANDATES THAT LOUISIANA ACT 151 OF 1969 BE STRUCK DOWN AS BEING VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The underlying question presented to this court is an issue that has never been considered squarely by this court, yet the issue arises from a requirement that has on numerous occasions been struck down by this court—the requirement of ownership of property as a requisite to the exercise of some right or as a requisite to the fulfillment of a qualification for a position.

The question before this court, whether the ownership of "assessed property" as a requisite to an appointed position

is a novel question and is of particular constitutional importance in order to safeguard the protections granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution as interpreted by a long line of decisions of the Supreme Court of the United States. If ownership of "assessed property" was allowed to stand as a constitutional element of classification, the door would be opened to undermine the protection afforded to all individuals, regardless of property ownership, by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

In *Turner v. Fouche,* 396 U. S. 346, 90 S.Ct. 532 (1970), the United States Supreme Court struck down a statutory scheme whereby only "freeholders" or immovable property or real property owners, could qualify for an appointed position as a member of a Georgia County Board of Education. The members of the County Board of Education were appointed by the County Grand Jury. In order to be eligible for such appointment, the person seeking appointment had to own immovable or real property within the county.

The Supreme Court, per Justice Stewart, struck the Georgia statute down on its face as being violative of the Equal Protection Clause of the Fourteenth Amendment. The court stated:

> ". . . the appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The State may not deny to some the privilege of holding public office that extends to others on the basis of distinctions that violate federal constitutional guarantees." Citing *Carrington v. Rash,*

380 U.S. 89, 91, 85 S.Ct. 775, 776, 13 L.Ed. 2d, 675; *Lassiter v. North Hampton County Board of Elections*, 360 U.S. 45, 50, 51, 79 S.Ct. 985, 989, 3 L.Ed. 2d, 1070; *Pope v. Williams*, 193 U.S. 621, 632, 24 S.Ct. 573, 575, 48 L.Ed. 817.

The court found it unnecessary to resort to the stricter equal protection test—"compelling state interest." The requirement the court held, whereby the right to hold this appointed public office is tied to the ownership of the immovable or real property:

> ". . . must fall even when measured by the traditional test for a denial of equal protection: whether the challenge classification rests on grounds wholly irrelevant to the achievement of a valid state objective."

Although the Supreme Court of the United States did not consider whether the ownership of "assessed property" was violative of the Equal Protection Clause of the Fourteenth Amendment in *Turner v. Fouche*, supra, the reasoning is equally applicable to a statutory scheme, as the one present before us, whereby only "freeholders" of "assessed property" could qualify for an appointed position.

Under the statutory scheme imposed by Act 151 of 1969, there is the possibility of someone owning a great amount of personal property or real property, yet owning no "assessed property." This person may have a great connection with the community despite the fact that none of his movable property is assessed. This particular appellant although owning no "assessed property," owned substantial amounts of "non-assessed" personal property and was an expert in the field of aviation.

It is submitted that such classification of ownership of "assessed property" is invidious discrimination and violative of the Equal Protection Clause of the Fourteenth Amendment as the ownership of "assessed property" in no rational way indicates a better qualified appointee to the commission of the Baton Rouge Airport District.

II. LOUISIANA ACT 151 OF 1969 IS VIOLATIVE OF APPELLANT'S EQUAL PROTECTION AND DUE PROCESS RIGHTS AS PROVIDED IN THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Notwithstanding the decision of *Turner v. Fouche*, supra, it must be determined whether the provisions of Louisiana Act 151 of 1969, requiring ownership of property appearing on the assessment rolls as a qualification to membership on The Greater Baton Rouge Airport Commission are constitutional in light of the Equal Protection Clause of the Fourteenth Amendment.

This appellant submits that the right to hold this public office, even though an appointed office, is a fundamental right and must not be denied by the arbitrary classification between owners of property and non-owners of such property:

> "Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermine the legitimacy of representative government." *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583.

This right to the public office of Commissioner, being a fundamental right, must be tested by the stricter test of the Equal Protection Clause, that is, the state must demonstrate

a "compelling state interest" for requiring such a classification. As is readily apparent, there cannot be shown any "compelling state interest" for such arbitrary classification.

It is clear to this appellant that resort to the stricter test of the Equal Protection Clause is not really necessary for even under the traditional test of equal protection, that is, a rational basis for such a classification, this statute is also constitutionally infirm.

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed. 2d, 24 (1968).

> "Although at times variously phrased, the traditional test of a statute validity under the Equal Protection Clause is a familiar one: A legislative classification is invalid only 'if it rest(s) on ground wholly irrelevant to achievement of the regulation objective.'" *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583, citing *Kotch v. Board of River Port Pilot Commission*, 330 U.S. 552, 556, 67 S.Ct. 910, 912, 91 L.Ed. 1093.

See also *McGowan v. Maryland*, 336 U.S. 420, 81 S.Ct. 1101, 6 L.Ed. 2d, 393 where it was stated:

> "The constitutional safeguard is offended only if a classification rests on grounds wholly irrelevant to the State's objective."

It must therefore be determined by this court if the classification between the ability of a property owner* to qualify and the inability of a non-property owner to qualify for a post on the Airport Commission, is a classification that is rationally related to a permissible legislative end. That is, it must be decided if ownership of property is relevant to the performance of the necessary work required of one who is a member of the Airport Commission—if the ownership of property assessed in East Baton Rouge Parish somehow makes one better qualified to serve on that Commission than one who does not own property or better qualified than a property owner whose property does not appear on the assessment rolls of the Parish of East Baton Rouge. If there is no such rational basis for the classification, then such delineation is a denial of the equal protection of the law, and is in violation of the United States Constitution.

In our present situation, the requirement of ownership of property assessed in East Baton Rouge Parish to qualify for membership on the Airport Commission, has no relevant relationship to the qualification or proper performance of the job as a member of the Airport Commission. The mere fact of ownership of property assessed in East Baton Rouge Parish makes such property owner no more qualified than any other person who is a citizen of East Baton Rouge Parish. All members of the parish, whether immovable property owners, movable property owners, or simple citizens, lacking any ownership of property, are all substantially interested in and significantly affected by the recommendations and decisions made by The Greater Baton Rouge Airport Commission. All

* Reference to property owner hereinafter will simply mean a property owner whose property appears on the assessment rolls in the Parish of East Baton Rouge.

of the members of the East Baton Rouge Parish community have an interest in the quality and performance of the airport and many of the decisions made by the members of the Commission have far-reaching consequences throughout the entire community. Decisions and recommendations made by the Commissioner affect the control of traffic throughout the entire vicinity, regardless of ownership of any property. Likewise, many of the decisions will affect the entire tourist trade and the migration of people into and throughout the community. Therefore, ultimately all of the people of the community, whether immovable property owners, movable property owners or simple citizens, lacking ownership of any property, are affected by the actions of The Greater Baton Rouge Airport Commission. It is therefore readily apparent that the state has no reasonable, rational basis in its classification and that the state has no legitimate interest in limiting membership on The Greater Baton Rouge Airport Commission to property owners, much less to owners of property appearing on the assessment rolls of the Parish of East Baton Rouge. Such a classification excludes many members of our community who will be substantially affected, and such exclusion is unnecessary to achieve the anticipated state goal of an airport facility able to meet the needs of the Greater East Baton Rouge Parish community. This classification, brought into existence by Act 151 of 1969, permits inclusion of many persons, who at best, have a remote and indirect interest and at the same time excludes others who have a distinct and direct interest. Likewise, there is no justification for the exclusion of this appellant, E. C. Chappelle, Jr., an interested and informed resident of the Parish of East Baton Rouge. The exclusion of this appellant or any other interested and qualified citizen of the East Baton Rouge Parish area, based upon the

lack of ownership of property assessed in East Baton Rouge Parish, is an irrational classification and is thus a denial of the equal protection of the law.

The United States Supreme Court has been very reluctant to uphold the rationality and thus the validity of classification between property owners and non-owners of property in light of an equal protection challenge. In four recent cases, the United States Supreme Court has struck down classifications that distinguish between property owners and non-owners of property, as denying the equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution. *Kramer v. Union Free School District*, supra, *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, (1969), *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 S.Ct. 1990, (1970), *Turner v. Fouche*, supra.

Although three of these cases involved the denial of the franchise to otherwise qualified electors, simply because such electors did not own real property, all of these decisions indicate that the highest court of our country does not favor classification which denies certain rights and privileges to persons because such persons lack ownership of property.

In *City of Phoenix, Arizona v. Kolodziejski*, supra, there was involved a challenge to the Arizona Constitution and statutes that exclude non-property owners from voting in elections to improve issuance of general obligation bonds. The United States Supreme Court seemed to indicate that there was an apparent rationally related basis for restricting the vote to real property owners, but yet still struck down such a classification as a denial of equal protection of the laws.

In language equally applicable here, the United States Supreme Court stated:

> "We thus conclude that, although owners of real property have interest somewhat different from the interest of non-property owners in the issuance of general obligation bonds, there is no basis for concluding that non-property owners are substantially less interested in the issuance of these securities than are property owners."

Therefore, the United States Supreme Court, though indicating that there was some reasonably rational basis for such classification, nevertheless struck down this classification as a denial of equal protection. Here, there is present more compelling reasons to strike down the classification imposed by the Louisiana Legislature in Louisiana Act 151 of 1969, as there is lacking in this act any rationally related basis for such classification to meet the desired state interest to have qualified members serve on The Greater Baton Rouge Airport Commission. Ownership of property, much less ownership of property appearing on the assessment rolls of the Parish of East Baton Rouge, is in no way related to the qualifications necessary to perform the job imposed upon a member of The Greater Baton Rouge Airport Commission.

In addition, Louisiana Act 151 of 1969 is a flagrant violation of the Due Process Clause of the United States Constitution. When a state exercises its power in the adoption of any law, there is the requirement that in the exercise of its power, a state must adopt a measure that is rational and reasonable in light of the power which that state has a right to exercise. That is, the state, in adopting the requirement of ownership of "assessed property" in order to qualify to the Airport Commission, must demonstrate a rational connection between

such requirement and its right to establish an Airport Commission, in order to satisfy the Due Process Clause of the United States Constitution. Here, there is a lack of any rational foundation for the requirement of the ownership of "assessed property" in order to qualify for membership on the Airport Commission. The fact that a person owns "assessed property" in the parish is no way indicative of the manner in which he will conduct anticipated goals of the state —to establish an airport that will meet the needs of the area and community. In the words of Justice Stewart in *Turner v. Fouche*, supra, "It seems impossible to discern any interest the qualification can serve." Thus Louisiana Act 151 of 1969 is not only a violation of the Equal Protection Clause, but likewise is a violation of the Due Process Clause of the United States Constitution.

III. THE RIGHT TO HOLD AN APPOINTIVE OFFICE IS A "FUNDAMENTAL RIGHT" WITHIN THE "COMPELLING STATE INTEREST TEST" OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Although this honorable court has never passed upon the issue of whether the right to hold public office is a fundamental right within the "compelling state interest" test of the Equal Protection Clauses, that issue is herein presented. The holding of a public office, whether elected or appointed, is the cornerstone of our democratic type of government. There can be no more fundamental right than the right that is fundamental to the continuation of our form of government —the right of all persons, regardless of property ownership, to seek and attain any public office in our governmental structure.

CONCLUSION

This Honorable Court should render a decision in appellant's favor striking down Louisiana Act 151 of 1969, thus granting the appellant the protection granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. The court in striking down the "assessed property" criterion will thwart another effort not only to cut off fundamental rights, but also to circumvent the United States Supreme Court's holdings of invidious discrimination when ownership of real property is involved.

Respectfully submitted

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PROOF OF SERVICE

I, Herschel C. Adcock, one of the Attorneys for E. C. Chappelle, Jr., Appellant herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the ..... day of February, 1977, I served a copy of the foregoing brief, and its appendices, on The Greater Baton Rouge Airport District, et al, Appellees, in connection with this appeal, by delivering the same to their counsel of record, Mr. Joseph F. Keogh, Parish Attorney, at his office in the Municipal Building, Baton Rouge, Louisiana, and upon Mr. William J. Guste, Jr., Attorney General for the State of Louisiana.

HERSCHEL C. ADCOCK,
Attorney for the Appellant

APPENDIX A

1. Louisiana Act 151 of 1969 at Section 3, the pertinent portion thereof states:

> "Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission."

Section 5 of that act contains no limitations that are pertinent to the matter before this Court.

2. East Baton Rouge Parish Council Resolution Number 8645 at Section 2, the pertinent portion thereof states:

> "SECTION 2. Creation of District. That there is hereby created pursuant to the authority of Article 14, Section 14(d.2) and Act 151 of 1969, an Airport District entitled 'Greater Baton Rouge Airport District,' said District to be composed of the whole of the Parish of East Baton Rouge and to constitute a subdivision of the State of Louisiana within the meaning of Article 10, Section 10, and Article 14, Section 14 of the Constitution of Louisiana. The governing authority of the Airport District shall consist of (i) an Airport Authority; and (ii) a Board of Commissioners, as provided hereinafter and as is provided for in Act 151 of 1969. 'Airport Authority,' subject to the requirements of Section 5 of Act 151 of 1969, consists of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and herein referred to as 'Authority.' The officers of the Parish Council and the Parish under the Plan of Govern-

ment shall be the officers of the Authority. The Board of Commissioners shall be known as 'Board of Commissioners of Greater Baton Rouge Airport District' and is hereinafter referred to as 'Commission.' "